

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 904.

THE UNITED STATES, APPELLANT,

vs.

WONG KIM ARK.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE
NORTHERN DISTRICT OF CALIFORNIA.

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1 UNITED STATES OF AMERICA, ss:

The President of the United States to Wong Kim Ark and his attorneys, T. D. Riordan, esq., Joseph Napthaly, esq., and Messrs. Napthaly, Friedenrich & Ackerman, greeting:

You are hereby cited and admonished to be and appear at the United States Supreme Court, to be holden at the city of Washington, in the District of Columbia, on the ninth day of March next, pursuant to an appeal taken, allowed, and filed in the clerk's office of the district court of the United States for the northern district of California, wherein The United States of America is appellant and Wong Kim Ark is respondent, and you are to show cause, if any there be, why the judgment in the said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable W. W. Morrow, judge of the United States district court for the northern district of California, this 16th day of January, A. D. 1896.

WM. W. MORROW,
United States District Judge Northern District of California.

2 Service of a copy of the within citation admitted this 18th day of January, 1896.

THOS. D. RIORDAN,
Attorney for Petitioner.
JOSEPH NAPTHALY,
Atty. for Petitioner.

(Indorsed:) No. 11198. District court of the United States, northern district of California. In re Wong Kim Ark, on habeas corpus. Citation. Service of the within citation by copy admitted, this 17th day of January, 1896. Napthaly, Friedenrich & Ackerman, attorneys for petitioner. Filed January 18, 1896. Southard Hoffman, clerk. By , deputy clerk. Henry S. Foote, United States attorney northern district of California, U. S. Appraisers' Building, Room 61.

3 In the district court of the United States in and for the northern district of California. In the matter of the application of Wong Kim Ark for a writ of habeas corpus.

To the Honorable W. W. MORROW,
*Judge of the District Court of the United States
in and for the Northern District of California:*

The petition of Hoo Lung Suey respectfully shows:

That he is a friend of said Wong Kim Ark. That said Wong Kim Ark is imprisoned, detained, confined, and restrained of his liberty by John H. Wise, collector of customs at the port of San Francisco, and the captain of the steamship "Peking." That said imprisonment, confinement, detention, and restraint are illegal, and that the illegality thereof consists in this, to wit: That said Wong Kim Ark is over the age of twenty-one years, was born in the city and county of San Francisco,

State of California, at number 751 Sacramento st., in said city and county, in the year 1870, and is a citizen of the United States of America. That his father's name is Wong Si Ping and his mother's name is Wee Lee. That in the latter part of the year 1894 he departed from the port of San Francisco for China, with intention to return. That he returned to the port of San Francisco from China on the steamer "Coptic" on the day of August, 1895, and was about to land, when he was prevented from so landing by said John H. Wise, collector of customs as aforesaid, who directed the captain of said vessel to detain him on board of said vessel, and he was so detained on said vessel until its departure from said port of San Francisco. That upon the departure of said vessel "Coptic," said John H. Wise, collector of customs as aforesaid, caused said Wong Kim Ark to be taken from said steamer "Coptic" and placed upon the steamer "Gaelic," and thereafter caused him to be placed on the steamer "Peking," and acting under the directions of said John H. Wise, collector of customs as aforesaid, said captain of said steamer "Peking" imprisons, detains, and confines said Wong Kim Ark on board of said vessel and refuses him permission to land. That said collector of customs and said captain of said vessel restrain said Wong Kim Ark from landing for the reason, as they allege, that although said Wong Kim Ark is a native born, that he is not a citizen of the United States; and they allege that, although he is a native born, he is not entitled to come into the United States because he is a laborer and of the Mongolian race.

And your petitioner respectfully denies such claim of said collector of customs and of said captain, and asserts that as said Wong Kim Ark is a native-born citizen of the United States he is entitled to enter the United States, and is entitled to land at the port of San Francisco, and is not affected by any act of Congress relating to the coming into the United States of persons of the Mongolian race; and that said collector of customs has no right to prohibit his landing.

Wherefore petitioner prays that a writ of habeas corpus may be granted, directed to said John H. Wise, collector of customs aforesaid, and to the captain of the steamer "Peking," commanding them and each of them to have the body of said Wong Kim Ark before your honor, at a time and place therein to be specified, to do and receive what shall then and there be considered by your honor concerning said Wong Kim Ark, together with the time and cause of his detention, and that he may thereupon be restored to his liberty.

(Signature in Chinese) HOO LUNG SUEY,
Petitioner.

NAPTHALY, FREIDENRICH & ACKERMAN, *Attorneys,*
426 California st., San Francisco, Cal.

UNITED STATES OF AMERICA,
District of California, ss:

Hoo Lung Suey, being duly sworn, deposes and says: That he is the petitioner herein who subscribed the foregoing petition; that he has heard read the said petition and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein states on his

information and belief, and as to those matters he verily believes it to be true. That he is a member of the firm of Ying Chung, No. 826 Clay st.

HOO LUNG SUEY. (Signature in Chinese.)

Subscribed and sworn to before me this 1st day of October, 1895.

JOHN FOUGA,

Commissioner U. S. Circuit Court, Northern District of California.

Let the writ of habeas corpus issue pursuant to the prayer of the petition, returnable forthwith.

Oct. 2, 1895.

WM. W. MORROW,

United States District Judge Northern District of California.

(Endorsed:) Filed Oct. 2nd, 1895. Southard Hoffman, clerk. By J. S. Manley, deputy clerk.

6 In the district court of the United States, northern district of California. In the matter of Wong Kim Ark. On habeas corpus. No. 11198.

The President of the United States of America to master of the steamship "Peking," greeting:

You are hereby commanded that you have the body of the said person by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said person shall be called or charged, before the Honorable Wm. W. Morrow, judge of the district court of the United States for the northern district of California, at the court room of said court, in the city and county of San Francisco, California, on the 2nd day of Oct., 1895, at o'clock, a. m., to do and receive what shall then and there be considered in the premises.

And have you then and there this writ.

Witness, the Honorable Wm. M. Morrow, judge of the said district court, and the seal thereof, at San Francisco, in said district, on the 2nd day of Oct., A. D., 1895.

[SEAL.]

SOUTHARD HOFFMAN,

Clerk of said District Court.

By J. S. MANLEY,

Deputy Clerk.

61 $\frac{1}{2}$ In obedience to the within writ, I hereby produce the body of Wong Kim Ark, as within directed, and return that I hold the said person in my custody by direction of the customs authorities of the port of San Francisco, California, under the provisions of the Chinese restriction act.

DAN'L FRIELE, *Master.*

Dated San Francisco, Cal., Nov. 7, 1895.

(Indorsed:) No. 11198. District court of the United States, northern district of California. In the matter of Wong Kim Ark, on habeas corpus. Ex "Coptic," ticket 24. S. S. ticket No. . Writ of habeas corpus and return thereto, (Endorsed:) Issued Oct. 2nd, 1895. Returnable Oct.

2nd, 1895. Filed on return this 7th day of October, 1895. Southard Hoffman, clerk of said U. S. district court. By J. S. Manley, deputy clerk.

7 In the district court of the United States, northern district of California. In the matter of Wong Kim Ark. On habeas corpus. No. 11198.

The President of the United States of America to master of the steamship "Peking," greeting:

You are hereby commanded that you have the body of the said person by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said person shall be called or charged, before the Honorable Wm. W. Morrow, judge of the district court of the United States for the northern district of California, at the court room of said court, in the city and county of San Francisco, California, on the 2nd day of Oct., 1895, at o'clock a. m., to do and receive what shall then and there be considered in the premises.

And have you then and there this writ.

Witness, the Honorable Wm. W. Morrow, judge of the said district court, and the seal thereof, at San Francisco, in said district, on the 2nd day of October, A. D. 1895.

[SEAL.]

SOUTHARD HOFFMAN,

Clerk of said District Court.

By J. S. MANLEY,

Deputy Clerk.

I, Southard Hoffman, clerk of the district court of the United States for the northern district of California, do hereby certify the foregoing to be a copy of the writ of habeas corpus issued in the within entitled matter.

Attest my hand and seal of said district court this 2nd day of October, A. D. 1895.

[SEAL.]

SOUTHARD HOFFMAN, *Clerk.*

By J. S. MANLEY, *Deputy Clerk.*

I hereby certify that on the 6th day of November, 1895, I received the writ of which the within is a copy, and that on the 6th day of November, 1895, at San Francisco, in this district, I personally served the said writ by delivering to and leaving the same with the captain of the S. S. "Peru."

Dated San Francisco, Cal., November 6th, 1895.

BARRY BALDWIN, *U. S. Marshal.*

By S. P. MONCKTON, *Deputy Marshal.*

(Indorsed:) No. 11198. District court of the United States, northern district of California. In the matter of Wong Kim Ark. On habeas corpus. S. S. ticket No. . Marshal's return of service of writ of habeas corpus. (Endorsed:) Issued Oct. 2nd, 1895. Returnable Oct. 2nd, 1895. Filed on return this 6th day of November, 1895. Southard Hoffman, clerk of said U. S. district court. By J. S. Manley, deputy clerk.

8 At a stated term of the district court of the United States of America for the northern district of California, held at the court room, in the city of San Francisco, on Thursday, the 7th day of November, in the year of our Lord one thousand eight hundred and ninety-five. Present, the Honorable Wm. W. Morrow, judge.

In re Wong Kim Ark. On habeas corpus. No. 11198.

In this case the detained being produced in open court in obedience to the writ issued herein, on motion of H. S. Foote, esq., U. S. attorney, it is ordered that the said Wong Kim Ark be committed to the custody of the U. S. marshal to await hearing. And by agreement of Mr. Foote and Joseph Naphtaly, esq., atty. for petr., it is ordered that the hearing hereof be, and the same is hereby, continued until, and set for, Monday, November 11th, 1895, at 10 o'clock a. m.

9 In the district court of the United States in and for the northern district of California. In the matter of Wong Kim Ark. On habeas corpus. No. 11198.

The above-named party having been produced in obedience to the writ of habeas corpus issued herein

It is ordered that said party be committed to the custody of the United States marshal for this district until the further order of the court.

WM. W. MORROW, *Judge.*

Dated Nov. 7TH, 1895.

Marshal's return.

UNITED STATES MARSHAL'S OFFICE,
NORTHERN DISTRICT OF CALIFORNIA.

The within warrant of commitment was received by me on the 7th day of November, A. D. 1895, and is returned executed this 11th day of November, A. D. 1895.

BARRY BALDWIN, *U. S. Marshal.*

By J. D. HARRIS, *Deputy Marshal.*

SAN FRANCISCO, CAL., Nov. 11th, 1895.

(Indorsed:) No. 11198. U. S. district court, northern district of California. In the matter of Wong Kim Ark. On habeas corpus. Commitment. (Endorsed:) Returned and filed this 11th day of Nov., A. D. 1895. Southard Hoffman, clerk. By , deputy clerk.

10 In the district court of the United States in and for the northern district of California. In the matter of the application of Wong Kim Ark for a writ of habeas corpus.

To the Honorable the District Court of the United States in and for the Northern District of California :

The petition of respectfully shows :

I.

That Wong Kim Ark is unlawfully imprisoned, detained, confined, and restrained of his liberty by John H. Wise, collector of customs at

the port of San Francisco, and D. D. Stubbs, general manager of the Occidental and Oriental Steamship Company, acting under his direction, in the city and county of San Francisco, State of California,

II.

And your petitioner respectfully further shows that the father and mother of Wong Kim Ark, namely, Wong Si Ping and Wee Lee, were in the year 1873, and for a long time prior thereto, and more especially at the date of the birth of said Wong Kim Ark, at the time and place hereinafter specified, domiciled residents of the United States, and had therein a continued, established, and permanent residence in the city and county of San Francisco, State of California, in the northern district of California; and prior to the time aforesaid had come to the United States under and in pursuance of the invitation extended to them, and at that time to all other persons of the Chinese race, under the provisions of the treaty between the United States of America and the Ta Sing
 11 Empire, of the 18th day of June, 1858, and the additional articles thereto, concluded and signed on the 28th of July, 1868 (Burlingame treaty), which then and there declared that the high contracting parties "cordially recognized the inherent and inalienable right of man to change his home and allegiance, and also the mutual advantage of the free migration and immigration of their citizens and subjects, respectively, from the one country to the other, for the purpose of curiosity, of trade, or as permanent residents;" and further declared that "Chinese subjects residing in the United States shall enjoy the same privileges, immunities, and exemptions in respect to residence as may there be enjoyed by the citizens or subjects of the most-favored nation."

III.

That the said mother and father of said Wong Kim Ark continued to have, enjoy, and maintain their said residence in the United States at said city and county of San Francisco in said State of California, as hereinbefore recited, until the year 1890, when they departed for China, as hereinafter stated.

IV.

That the said mother and father of said Wong Kim Ark are and were at all the times herein mentioned or referred to, persons of Chinese descent and subjects of the Emperor of China.

V.

That during the said residence of the said mother and father of said Wong Kim Ark in the said city and county of San Francisco, State of California, aforesaid, and more especially at No. 751 Sacramento street, in said city and county of San Francisco, State of California, in the
 12 year 1873, the said Wong Kim Ark was born at the said No. 751 Sacramento street, in said city and county of San Francisco and State aforesaid.

VI.

That during the residence aforesaid of the said mother and father of said Wong Kim Ark within the United States as aforesaid, his said parents were not engaged in any diplomatic or official capacity under the Emperor of China, but were engaged only in the prosecution of business.

VII.

That the said Wong Kim Ark was born within the dominion, power, protection, and obedience of the United States and subject to the jurisdiction thereof, and he has always subjected himself to the jurisdiction and dominion of the United States and yielded to the said United States direct and immediate allegiance, and has been taxed, recognized, and treated as a citizen of the United States; and that he has never lost his said nationality as a citizen of the United States, or lost or renounced his allegiance thereto, or his said citizenship, either by expatriation or change of residence or oath of allegiance or in any other manner whatsoever or at all.

VII.

That in the year 1890 the said father and mother of said Wong Kim Ark departed for China; that the same year, namely 1890, said Wong Kim Ark departed to China upon a temporary visit, and that it was his intention and the intention of the father and mother of said Wong Kim Ark that he, the said Wong Kim Ark, would return to this country; and he did return to the United States on the 26th day of July, 1890, by the steamship "Gaelic," and was permitted to land at the port of
 13 San Francisco by the collector of customs of said port upon the sole ground that he was a person born in the United States and subject to the jurisdiction thereof and a citizen of the United States.

IX.

That ever since the birth of said Wong Kim Ark, at the time and place hereinbefore averred, he has had but one residence, to wit, a residence at said city and county of San Francisco, in said State of California, and within the dominion and jurisdiction of the United States, and that he has never changed or lost said residence, or gained or acquired another residence.

X.

That from and after the date last aforesaid of the return of said Wong Kim Ark to the United States until the year 1894, he has continued to reside and remain within the United States as a citizen thereof, and that in the year 1894 he again departed for China upon a temporary visit, with the intention of returning to the United States, and did return from China to the United States on the steamship "Coptic" on the day of August, 1895, and applied to the collector of customs of the port of San Francisco to be permitted to land, and said application was denied.

XI.

That said Wong Kim Ark is detained and restrained of his liberty by, and in the custody of, John H. Wise, collector of customs at the port of San Francisco, and D. D. Stubbs, general manager of the Occidental and Oriental Steamship Company, acting under direction of said collector of customs, and under and by color of the authority of the United States, unlawfully and wrongfully, as petitioner is informed and verily believes, and in violation of the provisions of the Constitution of the United States and of the laws thereof, and especially in violation of the fifth amendment of the Constitution of the United States, that no person shall be deprived of liberty without due process of law.

XIII.

That said Wong Kim Ark is not detained by virtue of any judgment, order, or decree, or other judicial proceeding of any court, and that he is now detained only and solely by virtue of the pretended claim of the said John H. Wise, collector of customs at said port of San Francisco; that although born as aforesaid within the said United States, the said Wong Kim Ark is not a citizen of the United States, and that he is not detained or restrained in custody upon any other ground or for any other reason.

XIII.

That as petitioner is informed and verily believes, the detention of said Wong Kim Ark by the said John H. Wise, as collector of customs aforesaid, and the said D. D. Stubbs, general manager of the Occidental and Oriental Steamship Company, acting under direction of said collector of customs, is without jurisdiction, and that said Wong Kim Ark is restrained of his liberty without due process of law and against his rights under the Constitution of the United States and the laws thereof; that the acts of the Congress of the United States restricting and excluding the immigration of Chinese to the United States are not applicable to the said Wong Kim Ark, he being a citizen of the United States, and that the said Wong Kim Ark has never done or committed any act or thing whatsoever to exclude him from said United States, and that his said exclusion, detention, and custody are wholly without warrant or authority of law.

Wherefore, petitioner prays that the writ of habeas corpus may be granted, directed to said John H. Wise, collector of customs at the port of San Francisco, and said D. D. Stubbs, general manager of the Occidental and Oriental Steamship Company, commanding them and each of them to have the body of said Wong Kim Ark before your honor at a time and place therein to be specified, to do and receive what shall then and there be considered by your honor concerning him, together with the time and cause of his detention, and that he may be restored to his liberty.

WONG KIM ARK, *Petitioner.*

NAPHTHALY, FREIDENRICH & ACKERMAN and
THOS. D. RIORDAN,

Attorneys for Petitioner.

UNITED STATES OF AMERICA,

State of California, City and County of San Francisco:

Wong Kim Ark, being duly sworn, deposes and says on oath:

That he is the petitioner named in the foregoing petition; that he has heard read said petition, and knows the contents thereof; that the same is true of his own knowledge, and except as to the matters therein stated on his information and belief, and as to those matters he believes it to be true.

WONG KIM ARK.

Subscribed and sworn to before me this 11th day of November, 1895.

J. S. MANLEY,

Commissioner U. S. Circuit Court, Northern District of California.

(Endorsed:) Filed November 11th, 1895. Southard Hoffman, clerk.

By J. S. Manley, deputy clerk.

16 United States district court, northern district of California. In the matter of the application of Wong Kim Ark for writ of habeas corpus. No. 11198.

To the Honorable W. W. MORROW,

District Judge:

And now comes Henry S. Foote, esq., United States attorney for the northern district of California, and asks for leave to intervene for and on behalf of the United States in the matter of the application made on behalf of Wong Kim Ark for a writ of habeas corpus, and respectfully make opposition to said writ, and for grounds of intervention states as follows:

That, as he is informed and believes, the said person in whose behalf said application was made is not entitled to land in the United States, or to be or remain therein, as is alleged in said application, or otherwise.

Because the said Wong Kim Ark, although born in the city and county of San Francisco, State of California, United States of America, is not, under the laws of the State of California and of the United States, a citizen thereof, the mother and father of the said Wong Kim Ark being Chinese persons and subjects of the Emperor of China, and the said Wong Kim Ark being also a Chinese person and a subject of the Emperor of China.

Because the said Wong Kim Ark has been at all times, by reason of his race, language, color, and dress, a Chinese person, and now is, and for some time last past has been, a laborer by occupation.

17 That the said Wong Kim Ark is not entitled to land in the United States, or to be or remain therein, because he does not belong to any of the privileged classes enumerated in any of the acts of Congress, known as the Chinese exclusion acts, which would exempt him from the class or classes which are especially excluded from the United States by the provisions of the said acts.

Wherefore the said United States attorney asks that a judgment and order of this honorable court be made and entered in accordance with the allegations herein contained, and that the said Wong Kim Ark be

detained on board of said vessel until released as provided by law, or otherwise, to be returned to the country from whence he came, and that such further order be made as to the court may seem proper and legal on the premises.

Dated at San Francisco, California, this 11th day of November, 1895.

H. S. FOOTE, *United States Attorney.*

(Endorsed:) Filed November 11th, 1895. Southard Hoffman, clerk.
By J. S. Manley, deputy clerk.

8 United States district court, northern district of California. In the matter of the application of Wong Kim Ark for a writ of habeas corpus.

It is hereby stipulated and agreed that the following are the facts in the above-entitled matter, and on which said facts the said matter shall be submitted for decision:

I.

That the said Wong Kim Ark was born in the year 1873, at No. 751 Sacramento street, in the city and county of San Francisco, State of California, United States of America, and that his mother and father were persons of Chinese descent and subjects of the Emperor of China, and that said Wong Kim Ark was and is a laborer.

II.

That at the time of his said birth his mother and father were domiciled residents of the United States, and had established and enjoyed a permanent domicile and residence therein at said city and county of San Francisco, State aforesaid.

III.

That said mother and father of said Wong Kim Ark continued to reside and remain in the United States until the year 1890, when they departed for China.

IV.

That during all the time of their said residence in the United States as domiciled residents therein the said mother and father of said
9 Wong Kim Ark were engaged in the prosecution of business, and were never engaged in any diplomatic or official capacity under the Emperor of China.

V.

That ever since the birth of said Wong Kim Ark, at the time and place hereinbefore stated and stipulated, he has had but one residence, to wit, residence in said State of California, in the United States of America, and that he has never changed or lost said residence or gained or acquired another residence, and there resided claiming to be a citizen of the United States.

VI.

That in the year 1890 the said Wonk Kim Ark departed for China upon a temporary visit and with the intention of returning to the United States, and did return thereto on the 26th day of July, 1890, on the steamship "Gaelic," and was permitted to enter the United States by the collector of customs upon the sole ground that he was a native-born citizen of the United States.

VII.

That after his said return the said Wong Kim Ark remained in the United States, claiming to be a citizen thereof, until the year 1894, when he again departed for China upon a temporary visit, and with the intention of returning to the United States, and did return thereto in the month of August, 1895, and applied to the collector of customs to be permitted to land, and that such application was denied upon the sole ground that said Wong Kim Ark was not a citizen of the United States.

VIII.

That said Wong Kim Ark has not, either by himself or his parents acting for him, ever renounced his allegiance to the United States, and that he has never done or committed any act or thing to exclude him therefrom.

NAPHTALY, FREDENRICK & ACKERMAN and
THOS. D. RIORDAN,

Att'ys for Pet'n'r.

H. S. FOOTE,
U. S. Dist. Att'y, Northern Dist. of Cal.

(Endorsed:) Filed November 11th, 1895. Southard Hoffman, clerk.
By J. S. Manley, deputy clerk.

At a stated term of the district court of the United States of America for the northern district of California, held at the court room, in the city of San Francisco, on Monday, the 11th day of November, in the year of our Lord one thousand eight hundred and ninety-five. Present, the Honorable Wm. W. Morrow, judge.

In re Wong Kim Ark. On habeas corpus. No. 11198.

This matter this day came on regularly for hearing, Thos. D. Riordan, esq., and Joseph Naphthaly, esq., appearing as attorneys for the petitioner, and H. S. Foote, esq., U. S. attorney, and Bert Schlesinger, esq., assistant U. S. attorney, appearing on behalf of the United States. On motion of Mr. Riordan, it is ordered that the petitioner be, and he hereby is, allowed to file an amended petition. An agreed statement of facts was thereupon filed and the matter argued by Mr. Foote, Mr. Riordan, and Mr. Naphthaly, and submitted to the court for consideration and decision on brief to be filed two and two.

22 In the district court of the United States in and for the northern district of California. In the matter of Wong Kim Ark. On habeas corpus. No. 11198.

Opinion, rendered January 3rd, 1896.

Petition for a writ of habeas corpus. Petition granted and petitioner, Wong Kim Ark, discharged.

Thos. D. Riordan, esq., and Napthaly, Freidenrich & Ackerman, attorneys for petitioner.

H. S. Foote, esq., U. S. district attorney, and Geo. D. Collins, esq., as amicus curiae, appearing for the United States.

MORROW, district judge:

A petition for a writ of habeas corpus was filed on behalf of Wong Kim Ark, alleging that said Wong Kim Ark is unlawfully confined and restrained of his liberty on board of the steamship "Coptic" and prevented from landing into the United States by John H. Wise, collector of customs at the port of San Francisco, and D. D. Stubbs, general manager of the Occidental and Oriental Steamship Company, acting under his authority. It is averred, further, that Wong Kim Ark has the right to enter the United States because he was born within the United States and is a citizen thereof. The district attorney has intervened on behalf of the United States and objects to the discharge of Wong Kim Ark upon the ground that although born within the United States he is not, under

23 the laws of the United States, a citizen thereof, for the reason that his father and mother were at the time of his birth, and now are, Chinese persons and subjects of the Emperor of China, and that, therefore, Wong Kim Ark is also a Chinese person and a subject of the Emperor of China; that he is a Chinese laborer, and not entitled to land in the United States, or to be or remain therein, because he does not belong to any of the privileged classes enumerated in any of the acts of Congress known as the Chinese exclusion acts which would exempt him from the class or classes which are specially excluded from the United States by the provisions of said acts. An amended petition has been filed in which the detained himself petitions the court for a writ to test the legality of his detention. The amended petition sets out the facts of petitioner's detention and his right to enter this country as a citizen thereof more in detail than does the original petition; otherwise, both are substantially the same. An agreed statement of facts has been filed, which is as follows:

I.

That the said Wong Kim Ark was born in the year 1873 at No. 751 Sacramento street, in the city and county of San Francisco, State of California, United States of America, and that his mother and father were persons of Chinese descent and subjects of the Emperor of China, and that said Wong Kim Ark was and is a laborer.

II.

That at the time of his said birth, his mother and father were domiciled residents of the United States, and had established and enjoyed a permanent domicile and residence therein at said city and county of San Francisco, State aforesaid.

III.

24 That said mother and father of said Wong Kim Ark continued to reside and remain in the United States until the year 1890, when they departed for China.

IV.

That during all the time of their said residence in the United States, as domiciled residents therein, the said mother and father of said Wong Kim Ark were engaged in the prosecution of business, and were never engaged in any diplomatic or official capacity under the Emperor of China.

V.

That ever since the birth of said Wong Kim Ark, at the time and place hereinbefore stated and stipulated, he has had but one residence, to wit, a residence in said State of California, in the United States of America, and that he has never changed or lost said residence or gained or acquired another residence, and there resided claiming to be a citizen of the United States.

VI.

That in the year 1890 the said Wong Kim Ark departed for China upon a temporary visit and with the intention of returning to the United States, and did return thereto on the 26th day of July, 1890, on the steamship "Gaelic," and was permitted to enter the United States by the collector of customs, upon the sole ground that he was a native-born citizen of the United States.

VII.

That after his said return, the said Wong Kim Ark remained in the United States, claiming to be a citizen thereof, until the year 1894, when he again departed for China upon a temporary visit, and with the intention of returning to the United States, and did return thereto in the month of August, 1895, and applied to the collector of customs
25 to be permitted to land, and that such application was denied upon the sole ground that said Wong Kim Ark was not a citizen of the United States.

VIII.

That said Wong Kim Ark has not, either by himself or his parents acting for him, ever renounced his allegiance to the United States, and that he has never done or committed any act or thing to exclude him therefrom.

The question to be determined is whether a person born within the United States, whose father and mother were both persons of Chinese descent and subjects of the Emperor of China, but at the time of the birth were both domiciled residents of the United States, is a citizen within the meaning of that part of the 14th amendment of the Constitution, which provides that "All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the States wherein they reside."

The district attorney was assisted by Mr. George D. Collins, of the San Francisco bar, who appeared in the matter as *amicus curiæ*. Mr. Collins's position upon this question has been known for some time and his views have been expressed in able and interesting articles in the *American Law Review* (vol. 18, 831; vol. 29, 385). He maintains that the doctrine of international law as to citizenship exists in the United States, and not that of the common law; that the citizenship clause of the 14th amendment is in consonance with the international rule and should be so interpreted; and that, therefore, birth within the United States does not confer the right of citizenship. His views have been repeated and elaborated in his brief with much reasoning and plausibility. It is contended, on the part of the United States, that the words,

26 "subject to the jurisdiction thereof," mean subject to the political jurisdiction of the United States; that is to say, that the petitioner,

Wong Kim Ark, though born within the United States, was not born subject to the political jurisdiction of the General Government, for the reason that his father and mother were and are Chinese subjects, and that, according to the rule of international law, the political status of the child follows that of the father, and that of the mother, when the child is illegitimate. It is urged, therefore, that the mere fact of birth in this country does not, *ipso facto*, confer any right of citizenship. The position contended for assumes, practically, that the provision *for* the 14th amendment under consideration intends to follow and adopt the rule of international law. In support of this view, the remarks of Mr. Justice Story, in *Shanks v. Dupont* (3 Peters, 243, 247), are cited, to the effect that "Political rights do not stand upon the mere doctrines of municipal law, applicable to ordinary transactions, but stand upon the more general principles of the law of nations." It is contended, further, that the common-law doctrine does not govern the determination of the question of citizenship, for the reason that there is no common law proper of the United States, citing *Wheaton v. Peters* (8 Peters, 658), *Kendall v. United States* (12 Peters, 524), *Loman et al. v. Clarke* (2 McLean, 568), *United States v. The New Bedford Bridge* (1 Wood. & M., 401); *People v. Folsom* (5 Cal., 373; *In re Barry* (42 Fed. R., 113). Finally, it is maintained that the United States Supreme Court, in interpreting the first clause of the 14th amendment, now in question, in the *Slaughter-house Cases* (16 Wal. 36), adopted, to all intents and purposes, the rule of international law when it said through Mr. Justice Miller, "The phrase, 'subject to its jurisdiction,' was intended to exclude from its operation children of ministers, consuls, and citizens or subjects of foreign States born within the United States." The interpretation, by the Supreme Court, in the case of *Elk v. Wilkins* (112 U. S., 102) of this same phrase is also cited in support of the contention made in favor of the rule of international law.

On the other hand, counsel for petitioner contend that what the Supreme Court said in the Slaughterhouse cases, *supra*, is but mere dictum, and that, outside of a few scattered observations of this character, that tribunal has never directly passed upon the question presented for decision in this matter, viz, whether a person born in this country of foreign parents is a citizen. But it is claimed that that question has been adjudicated in this circuit in two cases, and that the law, as there expounded, is in favor of the citizenship of the petitioner, and, being the law of this circuit, is controlling upon this court. The first of these, and the one which is principally relied on, is *In re Look Tin Sing*, to be found reported in 10 Sawyer, 353, and decided in 1884. The second is the case of *Gee Fook Sing v. United States*, reported in 49 Fed. R., 146; s. c. 7 U. S. App., 27; s. c. 1 C. C. A. (9th cir.) 34. The last case is a decision of the circuit court of appeals for this circuit (9th) rendered in 1892, which reaches the same conclusion as did the circuit court *In re Look Tin Sing*. The case of *Lynch v. Clarke* (1 Sandf., 583), a decision rendered in 1844 and before the adoption of the 14th amendment, by Hon. Lewis H. Sandford, assistant vice-chancellor of the 1st circuit of the court of chancery of the State of New York, was also pressed upon the attention of the court, as authority showing that it was the common-law doctrine of citizenship, and not that of the law of nations, which had been

28 recognized in this country previous to the adoption of the 14th amendment. While the two decisions rendered in this circuit would seem, upon the principle of *stare decisis*, to be conclusive upon the question raised here and controlling on this court, yet, in view of the fact that it has been argued on the part of the Government, and very forcibly, that the Supreme Court laid down, in the Slaughterhouse cases, a doctrine at variance with that announced in these decisions and, as claimed, in consonance with that of the law of nations, it will be necessary to examine these cases with care and at some length. The question is an important one, not alone from an abstract point of view, but because of the consequences a decision unfavorable to the petitioner would involve. For, if the contention of counsel for the Government be correct, it will inevitably result that thousands of persons of both sexes who have been heretofore considered as citizens of the United States, and have always been treated as such, will be, to all intents and purposes, denationalized and remanded to a state of alienage. Included among these are thousands of voters who are exercising the right of suffrage as American citizens and whose right as such is not and never has been questioned, because birth within the country seems to have been recognized generally as conclusive upon the question of citizenship. But the Supreme Court has never squarely determined, either prior or subsequent to the adoption of the 14th amendment in 1868, the political status of children born here of foreign parents. In the case of *Minor v. Happersett* (21 Wall., 168), the court expressly declined to pass upon that question. Nor was there any definition in the Constitution or in the acts of Congress of what constituted citizenship until the adoption of the 14th amendment.

29 At the common law, if the parent be under the actual obedience of the King and the place of the child's birth be within the King's obedience as well as in the dominion, the child becomes a subject

of the realm; in other words, birth within the realm was deemed conclusive. This was decided in *Calven's Case*, reported by Lord Coke (7 Co., 1), and has always been recognized as the common-law doctrine. (1 Black. Com., 366; 2 Kent Com., 9; *Lynch v. Clarke*, 1 Sandf. Ch., 583; *U. S. v. Rhodes*, 1 Abbott's U. S. Rep., 28.)

By the law of nations, birth follows the political status of the father, and of the mother when the child is illegitimate. (Bar's Int. Law, sec. 31; Vattel, secs. 212-215; Savigny on Int. Law, sec. 351.)

The 14th amendment to the Constitution of the United States must be controlling upon the question presented for decision in this matter, irrespective of what the common law or international doctrine is. But the interpretation thereof is undoubtedly confused and complicated by the existence of these two doctrines, in view of the ambiguous and uncertain character of the qualifying phrase, "subject to the jurisdiction thereof," which renders it a debatable question as to which rule the provision was intended to declare. Whatever of doubt there may be is with respect to the meaning of that phrase. Does it mean subject to the laws of the United States, comprehending in the expression the allegiance that aliens owe in a foreign country to obey its laws, or does it signify to be subject to the political jurisdiction of the United States, in the sense that is contended for on the part of the Government? This question was ably and thoroughly considered in *re Look Tin Sing*, supra,

where it was held that it meant subject to the laws of the United States. Mr. Justice Field, sitting as circuit judge, delivered the opinion, which was concurred in by Judge Sawyer and Sabin. There is a note to the opinion stating that "Judge Hoffman did not sit on the hearing of this case, but he was on the bench when the opinion was delivered, and concurred in the views expressed." The opinion discusses and decides the precise question involved in the case at bar. There, as here, a person of Chinese descent, born in the United States, but whose parents had always been subjects of the Emperor of China, claimed the right to land in the United States by virtue of his right as a citizen thereof and, as such citizen, to be unaffected by any of the Chinese exclusion acts. The court held that, although born here of parents who were subjects of the Emperor of China, he was a citizen within the meaning of the 14th amendment; and that, though he was without the certificate required by the Chinese exclusion acts of 1882 or of 1884, being a citizen, he could not be prevented from returning to his country. The similarity of the essential facts between that case and the one at bar is obvious from the recital contained in the opinion, which is as follows:

"The petitioner belongs to the Chinese race, but he was born in Mendocino, in the State of California, in 1870. In 1879 he went to China, and returned to the Port of San Francisco during the present month (September, 1884) and now seeks to land, claiming the right to do so as a natural born citizen of the United States. It is admitted by an agreed statement of facts that his parents are now residing in Mendocino, in California, and have resided there for the last twenty years; that they are of the Chinese race, and have always been subject to the Emperor of China; that his father sent the petitioner to China, but with the intention that he should return to this country; that the father is a merchant at Mendocino, and is not here in any diplomatic or other

official capacity under the Emperor of China. The petitioner is without any certificate, under the act of 1882, or of 1884, and the district attorney of the United States, intervening for the Government, objects to his landing for the want of such certificate." The learned justice then continues: "The first section of the fourteenth amendment to the Constitution declares that 'all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside.' This language would seem to be sufficiently broad to cover the case of the petitioner. He is a person born in the United States. Any doubt on the subject, if there can be any, must arise out of the words 'subject to the jurisdiction thereof.' They alone are subject to the jurisdiction of the United States who are within their dominions and under the protection of their laws, and with the consequent obligation to obey them, when obedience can be rendered; and only those subject by their birth or naturalization are within the terms of the amendment. The jurisdiction over these latter must at the time be both actual and exclusive. The words mentioned except from citizenship children born in the United States of persons engaged in the diplomatic service of foreign Governments, such as ministers and ambassadors, whose residence, by a fiction of public law, is regarded as part of their country. This extraterritoriality of their residence secures to their children born here all the rights and privileges which would inure to them had they been born in the country of their parents. Person born on a public vessel of a

foreign country, whilst within the waters of the United States, and consequently within their territorial jurisdiction, are also excepted.

They are considered as born in the country to which the vessel belongs. In the case of public law, they are not born within the jurisdiction of the United States. The language used has also a more extended purpose. It was designed from citizenship persons who, though born or naturalized in the United States, have renounced their allegiance to our Government, and thus dissolved their political connection with the country. The United States recognized the right of everyone to expatriate himself and choose another country." The court then proceeds as follows:

"With this explanation of the meaning of the words in the fourteenth amendment, 'subject to the jurisdiction thereof,' it is evident that they do not exclude the petitioner from being a citizen. He is not within any of the classes of persons excepted from citizenship, and the jurisdiction of the United States over him at the time of his birth was exclusive of that of any other country." After adverting to the subjects of the citizenship clause of the 14th amendment, and to the fact that one of the purposes of its enactment was to overturn the doctrine enunciated in the Dred Scot case, the opinion continues: "Independently of the constitutional provision, it has always been the doctrine of this country, except as applied to Africans brought here and sold as slaves, and their descendants, that birth within the dominions and jurisdiction of the United States of itself creates citizenship. This subject was elaborately considered by Assistant Vice-Chancellor Sandford in *Lynch v. Clarke*, found in the first volume of his reports (1 Sandf., 583). In that case one Julia Lynch, born in New York, in 1819, of alien parents, during their temporary sojourn in that city, returned with them the same year to

33 their native country, and always resided there afterwards. It was held that she was a citizen of the United States. After an exhaustive examination of the law, the vice-chancellor said that he entertained no doubt that every person born within the dominions and allegiance of the United States, whatever the situation of his parents, was a natural-born citizen, and added that this was the general understanding of the legal profession, and the universal impression of the public mind. In illustration of this general understanding, he mentions the fact that when at an election an inquiry is made whether the person offering to vote is a citizen or an alien, if he answers that he is a native of this country, the answer is received as conclusive that he is a citizen; that no one inquires further; no one asks whether his parents were citizens or foreigners; it is enough that he was born here, whatever was the status of his parents. He shows also that legislative expositions on the subject speak but one language, and he cites to that effect not only the laws of the United States, but the statutes of a great number of the States, and establishes conclusively that there is on this subject a concurrence of legislative declaration with judicial opinion, and that both accord with the general understanding of the profession and of the public." The opinion concludes as follows: "As to the position of the district attorney that the restriction act prevents the reentry of the petitioner into the United States, even if he be a citizen, only a word is necessary. * * * Being a citizen, the law could not intend that he should ever look to the Government of a foreign country for permission to return to the United States, and no citizen can be excluded from this country except in punishment for crime. Exclusion for any other cause is unknown to our laws and beyond the power of Congress. The petitioner must be allowed to land, and it is so ordered."

34 In 1892 the question was again passed upon; this time by the circuit court of appeals for this circuit (9th), in the case of *Gee Fook Sing v. United States*, supra. *Gee Fook Sing*, the appellant, had sued for a writ of habeas corpus in the court below (district court for the northern district of California), claiming that he was illegally restrained of his liberty and imprisoned on board the steamship "Belgie," at the port of San Francisco, by the master of the vessel, on the ground that he was a Chinese person prohibited by law from entering into this country. The appellant contended that he was a citizen of this country and was not prohibited, therefore, from entering into the United States. The lower court found, upon the evidence adduced, that *Gee Fook Sing* had not established to its satisfaction that he had been born here and remanded him. This judgment was affirmed by the circuit court of appeals. The court was composed of Judges Deady, Hanford, and Hawley, and the opinion was delivered by Judge Hanford. The case was submitted upon the record without argument. In the course of the opinion, which was quite short, the court simply stated its conclusions upon the identical question presented here for decision, as follows: "We have considered all the questions of law and fact which we find involved, and our conclusions are: That, inasmuch as the fourteenth amendment to the Constitution of the United States declares that all persons born in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside, the laws excluding emigrants who

are Chinese laborers are inapplicable to a person born in this country and subject to the jurisdiction of its Government, even though his
 35 parents were not citizens nor entitled to become citizens under the laws providing for the naturalization of aliens; that any person alleging himself to be a citizen of the United States and desiring to return to his country from a foreign land, and that he is prevented from doing so without due process of law, and who on that ground applies to any United States court for a writ of habeas corpus, is entitled to have a hearing and a judicial determination of the facts so alleged, and that no act of Congress can be understood or construed as a bar to such hearing and judicial determination."

The authority of *In re Look Tin Sing* is not referred to by the court, nor, in fact, are any authorities cited or a discussion of the question indulged in; but it is safe to assume that Mr. Justice Field's decision was considered and followed. In 1888, Judge Deady, sitting in the circuit court for the district of Oregon, reached the same conclusion in the case of *In re Chin King et al.* (13 Saw., 333). He cites *In re Look Tin Sing* (supra) and *Lynch v. Clarke* (supra), and holds that the citizenship clause of the 14th amendment is but declaratory of the common-law doctrine. It is clear that these decisions, the one rendered in the circuit court of appeals and the other rendered in the circuit court of this district, determining, as they do, the identical question mooted in the case at bar, are conclusive and controlling upon this court, unless the Supreme Court of the United States has directly and authoritatively, and not by way of dictum, announced and laid down a doctrine at variance with that expounded in the cases in this circuit. The decisions of the Supreme Court, upon all questions necessarily involved in the cause determined, must be paramount, as binding authority on this court, to that of
 36 any other tribunal in the land. The circuit court of appeals act (March 3, 1891, 26 Stat. L., 826) has in no wise impaired or diminished the jurisdiction of the Supreme Court over "any case that involves the construction or application of the Constitution of the United States."

But as it has been argued, and very plausibly, by counsel for the United States that the Supreme Court has laid down a different doctrine in the so-called Slaughterhouse cases (16 Wall., 36), it will be necessary to examine critically the propositions involved in these cases and the language of the court as contained in the prevailing opinion. The Slaughterhouse cases were decided in 1873, and the opinion was delivered by Mr. Justice Miller. In the decision most of the provisions of the 13th, 14th, and 15th amendments to the Constitution received clear, elaborate, and able interpretation and construction. The main question at issue was as to whether or not the legislature of the State of Louisiana could grant exclusive right or privilege for 25 years to a corporation created by it, to have and maintain slaughterhouses, landings for cattle, and yards for inclosing cattle intended for sale or slaughter within the parishes of Orleans, Jefferson, and St. Bernard, in that State, and prohibiting all other persons from building, keeping, or having slaughterhouses, landings for cattle, and yards for cattle intended for sale or slaughter within those limits, and requiring that all cattle or other animals intended for sale or slaughter in that district should be brought to the yards and

slaughterhouses of the corporation, and authorizing the corporation to exact certain prescribed fees for the use of its wharves and for each animal landed, and certain prescribed fees for each animal slaughtered, besides the head, feet, gore, and entrails, except of swine. It was held that this grant of exclusive right or privilege, guarded by proper limitation of the prices to be charged and imposing the duty of providing ample conveniences with permission to all owners of stock to land and of all butchers to slaughter at those places, was a police regulation for the health and comfort of the people (the statute locating them where health and comfort required) within the power of the State legislature, unaffected by the Constitution of the United States previous to the adoption of the thirteenth and fourteenth articles of amendment; and, further, that such power was not forbidden by the thirteenth article of amendment and by the first clause of the fourteenth article.

While the question of citizenship under the 14th amendment arose, yet it was in subordination to the main issue, and was necessary to the decision of the court only in so far as it related to an interpretation of the second clause of the 14th amendment, as to whether the exclusive privileges granted by the State of Louisiana abridged any of the privileges and immunities of the citizens of the United States. It was in this connection that the further question arose as to who were citizens of the United States under the 14th amendment, and it was held that this provision protects from the hostile legislation of the States the privilege and immunities of citizens of the United States, as distinguished from those of citizens of the States. But the question which is here directly involved did not arise in that case, nor did the interpretation of the court relate to such a state of facts as exist here. Obviously, therefore, what the court then said with reference to the status of children born here of foreign parents is but obiter dictum. This will be evident by a reference to that part of the opinion which contains the language claimed to be a recognition of the international doctrine on the subject. "The first section of the fourteenth article, to which our attention is more specially invited, opens with a definition of citizenship—not only citizenship of the United States, but citizenship of the States. No such definition was previously found in the Constitution, nor had any attempt been made to define it by act of Congress. It had been the occasion of much discussion in the courts, by the Executive Departments, and in the public journals. It has been said by eminent judges that no man was a citizen of the United States except as he was a citizen of one of the States comprising the Union. Those, therefore, who had been born and resided always in the District of Columbia or in the Territories, though within the United States, were not citizens. Whether this proposition was sound or not had never been judicially decided. But it had been held by this court, in the celebrated Dred Scott case, only a few years before the outbreak of the civil war, that a man of African descent, whether a slave or not, was not and could not be a citizen of a State or of the United States. This decision, while it met the condemnation of some of the ablest statesmen and constitutional lawyers of the country, had never been overruled; and if it was to be accepted as a constitutional limitation of the right of citizenship, then all the negro race who had recently been made freemen were still not

only not citizens, but were incapable of becoming so by anything short of an amendment to the Constitution. To remove this difficulty, primarily, and to establish a clear and comprehensive definition of citizenship, which should declare what should constitute citizenship of the United States, and also citizenship of a State, the first clause of the

39 first section was framed. * * * The first observation we have to make on this first clause is, that it puts at rest both the questions which we stated to have been the subject of differences of opinion. It declares that persons may be citizens of the United States without regard to their citizenship of a particular State, and it overturns the Dred Scott decision by making all persons born within the United States and subject to its jurisdiction citizens of the United States. That its main purpose was to establish the citizenship of the negro can admit of no doubt. The phrase, 'subject to its jurisdiction,' was intended to exclude from its operation children of ministers, consuls, and citizens or subjects of foreign States born within the United States."

That this last sentence, which is the expression relied on by counsel for the Government, is mere dictum is plain from what has been stated as the issue involved in those cases. That being so, the observations referred to and relied upon, however persuasive they may appear to be, can not be accepted as declaring the law in this circuit, at least as against the authority of *In re Look Tin Sing*, where the question was squarely met and decisively settled. But it is to be observed that the Supreme Court, immediately succeeding the remarks just quoted, used the following significant language: "The next observation is more important, in view of the argument of counsel in the present case. It is that the distinction between citizenship of the United States and citizenship of a State is clearly recognized and established. Not only may a man be a citizen of the United States without being a citizen of a State, but an important element is necessary to convert the former into the latter.

40 He must reside within the State to make him a citizen of it, but it is only necessary that he should be born or naturalized in the United States to be a citizen of the Union."

Nor does the interpretation of the phrase in question in the case of *Elk v. Wilkins* (112 U. S., 94) dispose of the matter. There the question was whether an Indian, born within the United States and who had severed his tribal relations, was a citizen of the United States within the meaning of the 14th amendment, Mr. Justice Gray, delivering the opinion of the court, said: "This section contemplates two sources of citizenship, and two sources only—birth and naturalization. The persons declared to be citizens are 'all persons born or naturalized in the United States and subject to the jurisdiction thereof.' The evident meaning of these last words is not merely subject in some respect or degree to the jurisdiction of the United States, but completely subject to their political jurisdiction, and owing them direct and immediate allegiance. And the words relate to the time of birth in the one case as they do to the time of naturalization in the other. Persons not thus subject to the jurisdiction of the United States at the time of birth can not become so afterwards, except by being naturalized, either individually, as by proceedings under the naturalization acts, or collectively, as by the force of a treaty by which

foreign territory is acquired. Indians born within the territorial limits of the United States, members of and owing immediate allegiance to one of the Indian tribes (an alien, though dependent, power), although in a geographical sense born in the United States, are no more 'born in the United States and subject to the jurisdiction thereof,' within the meaning of the first section of the fourteenth amendment, than the children of subjects of any foreign Government born within the domain of the Government, or the children born within the United States, of ambassadors or other public ministers of foreign nations." In the case of the *United States v. Rhodes* (1 Abbott's U. S. Rep., 28, 40) it is held that the common-law rule as to citizenship is the law of this country. This decision was made in 1866 in the circuit court for the district of Kentucky. This was about the time when the 14th amendment was first proposed to the several States for their adoption, although it was not formally adopted as part of the Constitution until July 28th, 1868.

But it would be useless to encumber this already lengthy opinion with further argument and observation upon this interesting question. Arriving at the conclusion, as I do, after careful investigation and much consideration, that the Supreme Court has as yet announced no doctrine at variance with that contained in the *Look Tin Sing* decision and the other cases alluded to, I am constrained to follow the authority and law enunciated in this circuit. Counsel for the United States have argued with considerable force against the common-law rule and its recognition as being illogical and likely to lead to perplexing and perhaps serious international conflicts if followed in all cases; but these observations are obviously addressed to the policy of the rule and not to its interpretation. The doctrine of the law of nations, that the child follows the nationality of the parents, and that citizenship does not depend upon mere accidental place of birth, is undoubtedly more logical, reasonable, and satisfactory, but such consideration will not justify this court in declaring it to be the law against controlling judicial authority. It may be that the Executive Departments of the Government are at liberty to follow this international rule in dealing with questions of citizenship which arises between this and other countries, but that fact does not establish the law for the courts in dealing with persons within our own territory. In this case the question to be determined is as to the political status and rights of Wong Kim Ark under the law in this country. No foreign power has intervened or appears to be concerned in the matter. From the law as announced and the facts as stipulated I am of opinion that Wong Kim Ark is a citizen of the United States within the meaning of the citizenship clause of the 14th amendment. He does not forfeit his right to return to this country. His detention, therefore, is illegal. He should be discharged, and it is so ordered.

(Endorsed:) Filed January 3rd, 1896. Southard Hoffman, clerk.

At a stated term of the district court of the United States of America for the northern district of California, held at the court room in the city of San Francisco on Friday, the 3rd day of January, in the year of our Lord one thousand eight hundred and ninety-six.

Present, the Honorable Wm. W. Morrow, judge.

In re Wong Kim Ark. On habeas corpus. No. 11198.

This matter having been heretofore submitted to the court on an agreed statement of facts after argument of counsel for consideration and decision; now after due consideration had thereon, the court renders a written opinion. And by the court ordered that the said Wong Kim Ark be discharged. On motion of H. S. Foote, esq., United States attorney, it is ordered that an appeal to the Supreme Court of the United States be, and the same is hereby, granted. And on motion of Joseph Naphhtaly, esq., attorney for the petitioner, Mr. Foote consenting thereto, it is ordered that the said Wong Kim Ark be released from custody upon his giving his personal recognizance in the sum of two hundred and fifty dollars (\$250.00).

44 In the district court of the United States, northern district of California. In the matter of Wong Kim Ark. On habeas corpus. No. 11198.

This matter having been regularly brought on for hearing upon the issues joined herein, and the same having been duly heard and submitted, and due consideration having been thereon had, it is by the court now here ordered that the said named person, in whose behalf the writ of habeas corpus herein was sued out, is illegally restrained of his liberty, as alleged in the petition herein, and that he be, and he is hereby, discharged.

Entered this 3rd day of January, 1896.

SOUTHARD HOFFMAN, *Clerk.*

By J. S. MANLEY, *Deputy Clerk.*

(Indorsed :) No. 11198. District court of the United States, northern district of California. In re Wong Kim Ark. On habeas corpus. Order of discharge. (Endorsed :) Filed January 3d, 1896. Southard Hoffman, clerk. By J. S. Manley, deputy clerk.

45 In the district court of the United States in and for the northern district of California. In the matter of the application of Wong Kim Ark for a writ of habeas corpus.

Whereas said Wong Kim Ark did heretofore present to said court his petition that he was deprived of his right to land at the port of San Francisco, United States of America, the court may enquired into the cause of his detention, and that on due hearing and enquiry he may be allowed to land at said port; and whereas after due hearing had the court made its order on the 3rd of Jan'y, 1896, directing that the U. S. marshal for the said district, in whose custody the said Wong Kim Ark then was and ever since the issuance of the said writ of habeas corpus, let the said Wong Kim Ark go, and that he had been unlawfully deprived of his right to land at said port; and whereas the district attorney of the United States for said district has appealed from the said decision of said district court to the Supreme Court of the United States of America; and whereas the said court has made an order that pending the appeal from said decision of said court to the Supreme Court of the United States of

America, and whereas the said court had made an order that pending the appeal from said decision of said court ordering the discharge of said Wong Kim Ark, he, said Wong Kim Ark, be enlarged upon recognizance in the sum of two hundred and fifty dollars; and whereas said court has further ordered that for special reasons existing in this matter sureties upon such recognizance should not be required. Now, therefore,

46 the said Wong Kim Ark is hereby firmly held and bound unto the people of the United States of America in the full sum of two hundred and fifty dollars, conditioned that if the Supreme Court of the United States shall reverse the decision of said district court upon the appeal so taken as aforesaid, and shall hold that the said Wong Kim Ark was not entitled to land at the port of San Francisco aforesaid, then said Wong Kim Ark will surrender himself into the custody of the proper officer representing the United States authorities, or in default thereof pay to the said, the United States of America, the said sum of two hundred and fifty dollars.

Dated this third of January, 1896.

WONG KIM ARK.

Witness :

J. NAPHTHALY.

Taken and acknowledged before me this 3d day of January, 1896.

J. S. MANLEY,

Commissioner U. S. Circuit Court, Northern District of California.

Approved.

H. S. FOOTE, *U. S. Attorney.*

(Endorsed:) Filed January 3rd, 1896. Southard Hoffman, clerk. By J. S. Manley, deputy clerk.

47 In the district court of the United States, in and for the northern district of California. In the matter of the application of Wong Kim Ark for a writ of habeas corpus. No. 11198.

You will please take notice that the United States of America, appellant in the above-entitled matter, appeals to the Supreme Court of the United States from the order and judgment of discharge made and entered herein by said United States district court on the 3rd day of January, 1896, and from the whole and each and every part thereof.

Dated at San Francisco, Cal., January 4th, 1896.

Yours, etc.,

H. S. FOOTE,

United States Attorney and Attorney for Appellant.

To Messrs. Naphhtaly, Freidenrich & Ackerman and Thomas D. Riordan, Attorneys for Wong Kim Ark, and the Clerk of said District Court.

Service of the within notice by copy admitted this 4th day of January, 1896.

NAPHTHALY, FREIDENRICH & ACKERMAN and
THOS. D. RIORDAN,

Attorneys for Wong Kim Ark.

(Endorsed:) Filed Jan. 6th, 1896. Southard Hoffman, clerk.

48 In the district court of the United States in and for the northern district of California. In the matter of the application of Wong Kim Ark for a writ of habeas corpus. No. 11198.

Assignment of errors.

And now comes the United States of America, appellant, by its attorney, Henry S. Foote, esq., United States attorney for the northern district of California, and says that in the record and proceedings in the above-entitled matter there is manifest error, and particularly specifies the following as the errors upon which it will rely, and which it will urge upon the prosecution of its appeal in the above-entitled matter:

First. That the district court of the United States in and for the northern district of California erred in declaring that the said Wong Kim Ark is a citizen of the United States.

Second. That the said court erred in and by its judgment in declaring that the said Wong Kim Ark had not forfeited his right to return to this country.

Third. That the said court erred in and by its judgment in declaring that the detention of the said Wong Kim Ark was illegal.

Fourth. That the said court erred in and by its judgment in ordering the discharge of the said Wong Kim Ark.

Fifth. That the said judgment of discharge is contrary to law.

49 Wherefore, the said United States of America, appellant, prays that the judgment of the United States district court in and for the northern district of California be reversed.

H. S. FOOTE,

United States Attorney and Attorney for Appellant.

Service of the within assignment of errors by copy admitted this 4th day of January, 1896.

NAPHTALY, FREIDENRICH & ACKERMAN and
THOS. D. RIORDAN,

Attorneys for Wong Kim Ark.

(Endorsed:) Filed Jany. 6th, 1896. Southard Hoffman, clerk.

50 UNITED STATES OF AMERICA,
Northern District of California, ss:

I, Southard Hoffman, clerk of the district court of the United States for the northern district of California, do hereby certify the foregoing and hereunto annexed forty-nine pages, numbered from one (1) to (49) inclusive, constitute the transcript on appeal from said district court to the Supreme Court of the United States of America, in the matter of the application of Wong Kim Ark for a writ of habeas corpus, No. 11198.

In witness whereof I have hereunto set my hand and affixed the seal of said court at San Francisco, in said district, this 4th day of February, A. D. 1896.

[SEAL.]

SOUTHARD HOFFMAN,

Clerk U. S. District Court, Northern District of California.

(Indorsement on cover:) Case No. 16194. Term No., 904. The United States, appellant, vs. Wong Kim Ark. N. California D. C. U. S. Filed February 18th, 1896.